9 FAM 42.63

NOTES

(CT:VISA-2123; 06-06-2014)
(Office of Origin: CA/VO/L/R)

9 FAM 42.63 N1 APPLICATION FORMS AND OTHER DOCUMENTATION

9 FAM 42.63 N1.1 Standard and Nonstandard Forms

(CT:VISA-2123; 06-06-2014)

The only questionnaire-type form that may be used under standard procedures *is* Form DS-260, Online Application for Immigrant Visa and Alien Registration. Any nonstandard form, letter, or information sheet that a post believes is necessary because of an unusual local situation must be submitted to the Post Liaison Division, (CA/VO/F/P), for consideration, and may not be placed into use without advance approval. The Paperwork Reduction Act required Office of Management and Budget (OMB) approval before a U.S. Government agency may employ a new form to collect information. This requirement includes forms for local use by overseas consular sections.

9 FAM 42.63 N1.2 Post-Specific Information Sheets and Local Language Translations of Forms

(CT:VISA-1919; 10-04-2012)

a. Posts may, on the other hand, prepare an additional information sheet containing post-specific information. This information sheet should be kept as short as possible and must be made available on post's Internet site in addition to being provided in hard copy to visa applicants. An electronic copy of all post-specific information sheets must be provided to the Office of Visa Services (CA/VO) to the attention of the appropriate post liaison officer in the Post Operations Division (CA/VO/F/P). Although post is not required to seek advanced approval for nonstandard information sheets, note that the Visa Office and the National Visa Center (NVC) may require coordination and consolidation of information sheets in the interest of management efficiency.

b. Forms used in the immigrant visa process should not be translated into the local language. If you believe it useful, you may prepare a local language information sheet explaining the form.

9 FAM 42.63 N2 NECESSITY FOR STANDARD PROCEDURES

(CT:VISA-1362; 10-28-2009)

Standard procedures and forms have been developed and installed at all posts to:

(1) Ensure uniformity in explaining the requirements of the law to visa applicants;

(2) Reduce individual correspondence and possible misunderstandings arising there from; and

(3) Eliminate needless files and record-keeping by requiring applicants to retain their personal documents until the final step in the processing of the case is reached.

9 FAM 42.63 N3 RELEASE OF INFORMATION REGARDING PETITIONER'S CRIMINAL CONVICTIONS

9 FAM 42.63 N3.1 Convictions in General

(CT:VISA-1919; 10-04-2012)

a. Under 5 U.S.C. 552a, you cannot disclose any record pertaining to a citizen or lawful permanent resident (LPR) of the United States to any person or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record falls under one of the Privacy Act's enumerated exceptions. The Department, in consultation with OMB, has determined that you may release information regarding certain criminal convictions of a visa petitioner under the health and safety provision of the Privacy Act, 5 U.S.C. 552a(b)(8), when you find "compelling circumstances" affecting the health and safety of a beneficiary, such as when:

(1) The petitioner's conviction relates to a criminal offense against a minor or a sexually violent offense; and

(2) Among the beneficiaries of the petition there is a visa applicant who will be a member of the petitioner's household. Disclosure may be made only if you intend to approve the visa application. Before releasing the information, you must verify that the information is accurate by conducting a search in the National Sex Offender Public Registry or a comparable U.S. or State public criminal registry, by entering the petitioner's name, country and/or city/town, and zip code, and comparing the information for the individual listed in the registry with the available information regarding the

petitioner. By searching for information in such a registry, you will be undertaking reasonable efforts to determine whether the information is accurate and to confirm that the conviction has not been expunged from the petitioner's record. If the search produces verification of the current existence in the registry of information concerning such a conviction that has not been expunged, you may disclose the information to the visa applicant or to a minor applicant's parent or guardian. Disclosure must be limited to information concerning the petitioner's sex-crime conviction (and not any other criminal arrest or conviction) that can be verified through a U.S. public criminal registry. Appropriate case notes should be entered into Immigrant Visa Overseas (IVO) to indicate that the applicant received notice of the petitioner's criminal history. After informing the applicant, give the applicant time to decide whether he or she wishes to proceed with the visa application. Also, after the disclosure is made, you must notify the petitioner in writing that you have released information by sending notification to his or her last known address. Sample text is found in 9 FAM 42.63 Exhibit I. (You must obtain, through an advisory opinion from the Advisory Opinions Division (CA/VO/L/A), Department approval of the text of the notification before sending it to the petitioner.)

b. Please contact CA/VO/L/A before making any visa-related disclosures under the "health and safety" exception to the Privacy Act aside from the disclosures outlined above.

NOTE: The guidance in this note does not apply for K-visa cases involving petitions filed on or after March 6, 2006. Those cases are governed by the International Marriage Brokers Regulation Act of 2005 (IMBRA), Subtitle D of Public Law 109-162, Violence Against Women and Department of Justice Reauthorization Act of 2005. You should disclose to a K-visa applicant during the visa interview such information regarding the petitioner's conviction information provided by U.S. Citizenship and Immigration Services (USCIS) in accordance with instructions provided by USCIS in the individual cases.

9 FAM 42.63 N3.2 Convictions Information and the Adam Walsh Act

(CT:VISA-1465; 08-09-2010)

a. Section 402 of the Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act"), amended INA 204(a)(1) and 101(a)(15)(K), rendering ineligible to file a petition for immigrant status under INA 203(a) or nonimmigrant K status, any petitioner who has been convicted of a "specific offense against a minor," defined in section 111 of the Adam Walsh Act as a offense involving any of the following:

(1) An offense (unless committed by a parent or guardian) involving kidnapping;

(2) An offense (unless committed by a parent or guardian) involving false imprisonment;

(3) Solicitation to engage in sexual contact;

(4) Use in a sexual performance;

(5) Solicitation to practice prostitution;

(6) Video voyeurism as described in section 1801 of title 18, United States Code (18 U.S.C. 1801);

(7) Possession, production, or distribution of child pornography;

(8) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct; or

(9) Any conduct that by its nature is a sex offense against a minor.

Section 402 further provides that the bar against filing a petition because of such a conviction will not apply if the Secretary of Homeland Security, in sole and unreviewable discretion, determines that the petitioner poses no risk to the beneficiary.

b. Because of the Adam Walsh Act, if you know or have reason to believe, at any time prior to visa issuance, that a petitioner who files an approved petition has been convicted of an offense against a minor listed in paragraph (a) and that USCIS has not considered the conviction for purposes of determining the petitioner's eligibility to file, you must send the approved petition to USCIS for a determination of its validity. In the case of a petition that was approved at post following the necessary USCIS criminal history record search, you must consider the petition not "clearly approvable," and forward it, with all supporting documents, to the appropriate USCIS office abroad with jurisdiction over that location. If Form I-130, Petition for Alien Relative, approval occurred at a USCIS regional office abroad, you should return the petition directly to that office for possible revocation. Otherwise, petitions approved by USCIS should be returned through the National Visa Center (NVC) for possible revocation. The basis for the return would be that information indicating that the petitioner was ineligible to file apparently was not known at the time the petition was approved. You would not disclose the conviction information to the visa applicant in cases in which the petition was returned because of the Adam Walsh Act.

c. The Adam Walsh Act's ban against the filing of a petition for family-based immigrant and K-nonimmigrant visa status by an individual who has been convicted of a specified offense against a minor does not apply if the Secretary of Homeland Security exercises his or her sole and unreviewable discretionary authority and determines that the individual poses no risk to a beneficiary. You may encounter cases in which the criminal history information reported to post by USCIS relates to a conviction for a crime that is one of the specified offenses against a minor listed in paragraph a of this section. Provided that the petition

reflects that there has been a no-risk determination by the Secretary of Homeland Security and you intend to approve the visa application, you should not forward the petition to USCIS based on the conviction in that instance, but instead consider it to have been properly filed under the Adam Walsh Act, while nonetheless informing the visa applicant of the conviction during the interview if compelling circumstances affecting the health and safety of a beneficiary (see 9 FAM 42.63 N3.1, paragraph a, exists).